Supreme Court, U.S.
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No. 71-125

# In the Supreme Court of the United States

OCTOBER TERM, 1971

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JOSEPH A. LANGONE, III, PETITIONER

*v.*

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT*

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## MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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ERWIN N. GRISWOLD,
*Solicitor General,*
*Department of Justice,*
*Washington, D. C. 20530.*

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After a jury trial in the United States District Court for the District of Massachusetts, petitioner was convicted of having assaulted and impeded a federal officer (a narcotics agent) in the performance of his official duties, in violation of 18 U.S.C. 111. The court of appeals affirmed (Pet. 13-15).

At trial, petitioner requested instructions that it was necessary for the government to show that he knew the agent to be a federal officer and that the officer was then engaged in official duties. The trial

judge granted the first instruction but refused the second.

Petitioner, largely addressing his argument to the issue whether knowledge that the officer is a federal officer is required, contends that there is a conflict in decisions between courts of appeals that merits review. However, petitioner was given the benefit of an instruction on this issue by the trial judge. It was not necessary to show further that he knew the officer was engaged in official duties. Moreover, as the petitioner himself and the opinion below show, no court of appeals presently holds that knowledge of the federal status of the officer is an element of the crime.[1]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
*Solicitor General.*

AUGUST 1971.

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[1] Though petitioner asserts that the decision below conflicts with a decision of the Sixth Circuit Court of Appeals concerning a statute "similar to § 111 in all essentials" (Pet. 10), that court recently held that scienter is not an essential element under 18 U.S.C. 111. *United States* v. *Kiraly*, No. 21047, decided July 14, 1971.

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